



NEWS RELEASE

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SUBJECT: Shoreland rule revision committee to address nonconforming structures

MADISON, Wis. – An advisory committee helping update state rules to protect shorelands is set to tackle what officials say is one of the most controversial and problematic parts of the rules: limits on renovating or enlarging what are known as “nonconforming structures.” Nonconforming structures include homes and buildings that were built before current rules and are located closer to the water than the rules allow.

“The number one problem we hear about Wisconsin’s shoreland protection rules is that property owners are confused and concerned about whether they’re going to be able to make reasonable use of homes that don’t conform to the rules,” says Al Shea, who chairs the advisory committee and directs the Department of Natural Resources watershed management bureau. “The second biggest problem is that the provisions for these nonconforming structures are difficult for county zoning administrators to enforce.”

The advisory committee will try to address those problems when it meets March 24 and 25 in Madison at the Lussier Family Heritage Center. It’s the second of three committee meetings to focus on specific parts of the state shoreland zoning rules, Chapter Natural Resources 115 of the Wisconsin Administrative Code.

All materials for the meeting are available on the DNR Web site: <http://www.dnr.state.wi.us>. From the home page, click on the “go to some topic” drop down menu and select “shoreland management” and look on the righthand side for the latest news on the revision. People also can send in their comments to be circulated among DNR staff and advisory committee members, and can attend statewide listening sessions planned for later this year to comment on the committee’s preferred options for rule changes to all aspects of NR 115.

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At the March meeting, advisory committee members will discuss and consider options and recommendations to existing NR 115 requirements that limit expansion, improvement or structural repair of older waterfront cottages and homes located closer to the water than the rules allow. The state rules require structures to be set back 75 feet from the water; some counties require greater setbacks.

The goals of the meeting, Shea says, are to find ways to make these requirements for “nonconforming structures” easier for people to understand and for counties to administer. Most importantly, the committee will consider ways to allow people who own some nonconforming structures not immediately next to the water to moderately enlarge these homes if the owners take steps to offset, or “mitigate” their project’s potential harm to the environment. Such steps might include planting and maintaining a buffer of native plants and trees between the home and the water’s edge.

Now, both NR 115 and most Wisconsin counties allow people to maintain and repair their nonconforming structures, including internal and external painting, decorating, paneling, and replacing doors, windows and other nonstructural components, according to Linda Meyer, the DNR lawyer working with the advisory committee. But people are limited in the amount of structural repairs, expansions and improvements they can do at that same location. Someone who wants to build a bigger building on their property and the costs exceed 50 percent of the current equalized assessed value of the structure must set it back far enough from the water to meet the requirement in the current county ordinance.

The concept of nonconforming structures traces to the advent of zoning in the United States in the 1920s and is common in residential and other kinds of zoning, not just shoreland zoning, Meyer says. The idea is to allow a person reasonable use of a house or other structure that doesn’t meet zoning ordinances passed since the home’s construction, but to eventually require the structure to meet current ordinance requirements, she says.

The assumption is that near the end of the home’s useful life, the owner would replace it with a building that meets current ordinances instead of continuing to try to maintain a deteriorating structure. All properties eventually need to comply so the municipality can meet constitutional requirements for treating property owners in the same zoning area fairly and to achieve its zoning goal – which in the case of shoreland zoning, is to protect water quality, habitat and scenic beauty, Meyer says.

The Legislature’s 1966 Water Resources Act charged DNR with developing NR 115, the minimum shoreland standards that set minimum lot sizes, how far structures are set back from the water, and limits on removing trees and other plants. The law required counties to adopt ordinances requiring these statewide minimum standards or more protective standards, and mandated the counties to address nonconforming issues, according to Gary Heinrichs, the DNR shoreland management team member who will talk to the advisory committee about nonconforming structures.

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People were to be allowed to continue to use homes built before counties adopted their shoreland zoning ordinances, the law said, but their homes eventually had to comply with the ordinances, including requirements that structures be set back at least 75 feet from the water to meet the state minimum standard or more if the county's ordinance was more protective.

Most counties adopted an approach known as the "50 percent rule." That approach typically allowed people to do regular maintenance but limited additions, modifications, and structural repairs to 50 percent of the current equalized assessed value of the structure at the time the project is proposed, Heinrichs says.

The 50 percent is a cumulative figure that applies to all additions, modifications and structural repairs; property owners can reach the limit by doing one large project or by doing a number of smaller projects which add up to 50 percent of the equalized assessed value. For example, an owner making a \$30,000 improvement to a house assessed at \$100,000 would have "used up" 30 percent toward that 50 percent cumulative limit. If, as time passes, the assessed value doubles to \$200,000 and the homeowner wants to make an additional \$50,000 improvement, that particular improvement constitutes 25 percent of the current assessed value, but it would be added to the earlier 30 percent improvement, exceeding the allowed 50 percent limit.

While every Wisconsin county probably used this 50 percent rule approach at one time, it has proved unpopular and confusing. For instance, a 1996 University of Wisconsin-Superior survey found that only 7 percent of property owners, and 32 percent of real estate agents and consultants polled in Oneida County, could correctly answer questions about rules governing nonconforming structures.

Counties using the 50 percent rule in the past sought to allow exemptions to the limits on structural repairs, additions and expansions by granting variances, Meyer says. But a 1997 Wisconsin State Supreme Court ruling has limited counties' uses of variances at the same time more property owners are wanting to expand or tear down and replace their existing structures on the same site.

As a result of these problems, some counties have eliminated the 50 percent rule entirely, made some changes to it, or are struggling with applying it in a fair manner, Shea says.

Shea says the committee will consider options that allow more flexibility for structural repairs and expansions for people whose existing homes are closer to the water than controlling setback distance, whether it's 75 feet or greater, but aren't right next to the water in the most critical habitat, known as the primary buffer zone.

"The primary buffer zone is where we need to be particularly careful of where development is allowed," Shea says. "But for structures outside that zone, we are seeking to give property owners more flexibility in the amount of alteration or expansion they're allowed for nonconforming structures if we can get greater environmental protection elsewhere on the same property."

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Committee expands to address floodproofing in floodplains

MADISON – The advisory committee helping revise Wisconsin’s shoreland protection rules will expand its charge for the March 24-25 meeting in Madison and welcome new members.

The committee’s planned discussion about current limits on how people can enlarge or replace older homes close to the waterfront also will extend to limits on “floodproofing” existing homes in floodprone areas and other concerns about “nonconforming structures.” Nonconforming structures are those that do not meet current ordinances for floodprone areas: either they are located in the “floodway,” where water flows during floods, or they are not properly elevated in the “floodfringe,” areas with standing water during flooding.

The advisory committee also will expand; four representatives are being added specifically for the March 24-25 meeting to help tackle the floodproofing issue. Four new members will join the committee permanently to broaden representation from waterfront property owners as the group continues efforts to help update 36-year-old rules that govern lot sizes, how far buildings are set back from the water, and other limits on development along Wisconsin lakes and rivers.

Al Shea, who chairs the advisory committee and directs the Department of Natural Resources’ watershed management bureau, said the advisory committee was expanding its agenda to include consideration of the floodproofing issue to meet a legislative mandate in a timely, efficient manner.

The Joint Committee for the Review of Administrative Rules has directed DNR to review and change the floodproofing limitations in floodplains, a provision in Natural Resources Chapter 116 of the Wisconsin Administrative Code.

The advisory committee updating the shoreland rules, Chapter NR 115, seemed a logical choice to address the legislative committee’s charge because DNR would involve many of the same interest groups in the discussions.

“The issue of nonconforming structures crosses the two rules and many of the zoning administrators that are keeping track of our NR 115 process also administer NR 116,” Shea says. “So we thought it would be best to talk about those two issues at one time, in one place.”

As with NR 115, counties are required to adopt the state minimum standards laid out in NR 116 or can adopt more protective standards. NR 116 rules are intended to protect human life, human health, and property and they do so by prohibiting homes and other “habitable” structures in the part of the floodplain likely to be covered by flowing water during a flood, and limiting the expansion and alteration of structures in the “floodfringe,” which will tend to have standing water during flooding.

People joining the committee for the discussion concerning floodproofing are Dan Olson, a representative of the League of Wisconsin Municipalities; a representative from the Association of

Floodplain Managers; Tamara Dudiak of the University of Wisconsin-Extension Lakes program, and Mark Cupp, a representative of the Lower Wisconsin Riverway Board.

The new permanent members joining the committee starting with the March 24-25 meeting are waterfront property owners Robert Kendall of Three Lakes, Marc A. Schultz of Onalaska and Jim Liebert of Heartland. A fourth new waterfront member, from Stevens Point, also has been invited but has not yet accepted.